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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91237315
Party	Plaintiff American Marriage Ministries
Correspondence Address	NANCY V STEPHENS FOSTER PEPPER PLLC 1111 3RD AVENUE SUITE 3000 SEATTLE, WA 98101 UNITED STATES Primary Email: nancy.stephens@foster.com 206-447-4400
Submission	Reply in Support of Motion
Filer's Name	Nancy V. Stephens
Filer's email	nancy.stephens@foster.com
Signature	/Nancy V. Stephens/
Date	01/13/2021
Attachments	54210017-v1-AMM GET ORDAINED Reply in Support of Motion to Strike ULC _s Reply Brief.pdf(26184 bytes ) RE_ Reply in Support of Motion to Strike_Extend.pdf(94427 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN MARRIAGE MINISTRIES,	)	
	)	
v.                      Opposer,	)	Opposition No. 91237315
	)	
UNIVERSAL LIFE CHURCH	)	<b>OPPOSER’S REPLY IN SUPPORT OF</b>
MONASTERY STOREHOUSE, INC.	)	<b>ITS MOTION TO STRIKE</b>
	)	<b>APPLICANT’S OVERLENGTH REPLY</b>
Applicant.	)	
	)	
_____	)	

Applicant’s Opposition does not provide any legally sufficient basis for the Board to accept Applicant’s late and over-length Reply. Applicant attempts to remedy its problems by blaming Opposer, using a partial e-mail string that omits the most relevant part of the discussion between counsel, citing to inapposite case law, and attempting to provide a new reply, which would be filed even later than the already late original reply. None of these attempts are based on prior precedent, and none of these attempts should be allowed.

Applicant does not address or even attempt to distinguish any of the case law or regulatory authority provided by Opposer regarding the striking of over-length motion briefs. The one citation Applicant provides in support of the idea of filing a substitute brief, *In re Charlene Corp.*, No. 87937460 (TTAB Sept. 15, 2020) (non-precedential), is distinguishable. That case involves an appeal brief submitted under 37 CFR § 2.142, not a reply in support of a motion submitted under 37 C.F.R. § 2.127, which is the controlling law here. Moreover, the substitute brief offered in that case was submitted timely and at the request of the Board. Further, that case is specifically listed as non-precedential, and it therefore cannot overcome the precedent cited by Opposer in favor of striking overlength replies. Applicant provides no

applicable case law or regulatory authority which would allow replacement of a late, over-length reply in support of a discovery motion.<sup>1</sup>

Applicant strangely spends the majority of its brief addressing the timeliness issue, which Opposer's Motion addressed only in passing. Applicant attempts to argue, using an email between counsel, that Opposer allegedly agreed not to dispute the timeliness of Opposer's late and over-length Reply. More accurately, as demonstrated in the rest of the email string exchanged that same day and omitted by Applicant (but attached to this Reply), Opposer's counsel made it clear, based on the same case law provided in Opposer's Motion, that it was inappropriate for Opposer to consent to Applicant's late submission because precedential authority and regulatory authority made it clear that Applicant's brief had multiple issues that could not be resolved through consent. Applicant's counsel never responded to that email, just as Applicant did not respond to that precedent in its current Opposition.

To the extent Applicant cites authority regarding timeliness, that authority, like its authority on length, is inapposite. *Intel Corp. v. Wheeler-Sweet* is a case dealing with the Board's ability to extend the time for opening trial briefs, not motion reply briefs. *See* Opposition No. 91096517, \*5 (TTAB May 18, 1999) (non-precedential). The previously discussed case *In re Charlene Corp.* also does not deal with a motion reply brief. *See* No. 87937460 (TTAB Sept. 15, 2020) (non-precedential) (dealing with appeal briefs). Likewise, *Virgin Enters. Ltd. v. Albion Motors Ford Mercury, Inc.* deals with a reply trial brief, not a motion reply. *See* Opposition Nos. 91153575, 91153612, 91154161, \*\*1-2 (TTAB Aug. 10, 2007) (nonprecedential). These distinctions are important, as trial briefs are filed pursuant to 37 C.F.R. § 2.128 and appeal briefs

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<sup>1</sup> Applicant also attempts to excuse its failure to follow the Rules by arguing that it was somehow "efficient" to include new issues and arguments in its Reply that were not addressed in its original Motion or in Opposer's Opposition without even attempting to raise the issue between counsel before troubling the Board with the matter.

are filed pursuant to 37 CFR § 2.142, whereas the controlling authority on motion briefs is 37 C.F.R. § 2.127. While §§ 2.128 and 2.142 each set a time for a reply brief, neither contain the applicable and controlling language of 37 C.F.R. § 2.127(a), which expressly mandates that “[t]he time for filing a reply brief will not be extended or reopened.” Thus, for appeal reply briefs or trial reply briefs there is discretion regarding acceptance of late briefs, but that discretion does not exist in motion practice. Applicant fails to identify any case that holds to the contrary.

The Board should follow 37 C.F.R. § 2.127(a) and its own precedent and decline to consider Applicant’s Reply.

Dated: January 13, 2021

/Nancy V. Stephens/  
Nancy V. Stephens WSBA No. 31510  
Benjamin Hodges, WSBA No. 49301  
Kelly A. Mennemeier WSBA No. 51838  
Foster Garvey PC  
Attorneys for Opposer  
1111 Third Avenue, Suite 3200  
Seattle, WA 98101-3299  
206-447-4400

**CERTIFICATE OF SERVICE**

I hereby certify that on January 13, 2021, I served the foregoing Opposer's Reply in Support of its Motion to Strike Applicant's Overlength Reply by emailing to Applicant as follows:

Michael P. Matesky, II  
Matesky Law PLLC  
[trademarks@mateskylaw.com](mailto:trademarks@mateskylaw.com)  
[mike@mateskylaw.com](mailto:mike@mateskylaw.com)

\_\_\_\_\_  
/Nancy V. Stephens/  
Nancy V. Stephens

**From:** [Ben Hodges](#)  
**To:** [Mike Matesky](#); [Nancy Stephens](#); [Kelly Mennemeier](#)  
**Cc:** [Michael Galletch](#)  
**Subject:** RE: Reply in Support of Motion to Strike/Extend  
**Date:** Wednesday, December 09, 2020 10:02:19 PM

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Mike,

It isn't our position that we should be consenting to the reply brief at all given our position. We don't begrudge your right to request and have no problem with that, but we don't think we can consent nor do we think our consent matters to this particular issue. *See Saint-Gobain Corp.*, 66 U.S.P.Q.2d 1220 (T.T.A.B. 2003) ("Notwithstanding applicant's consent to the extension that opposer seeks, extensions of time to file reply briefs with regard to motions in *inter partes* proceedings before the Board are expressly prohibited.")

Thanks.

Ben

**Ben Hodges**  
**Principal**

Foster Garvey PC  
*Tel:* 206.447.6282  
[ben.hodges@foster.com](mailto:ben.hodges@foster.com)

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**From:** Mike Matesky [<mailto:mike@mateskylaw.com>]  
**Sent:** Wednesday, December 09, 2020 1:47 PM  
**To:** Ben Hodges; Nancy Stephens; Kelly Mennemeier  
**Cc:** Michael Galletch  
**Subject:** RE: Reply in Support of Motion to Strike/Extend

Hi Ben,

I'm not asking AMM to consent to the brief, but to a 1-day extension of the filing deadline. That would not imply any endorsement of its content. Is AMM unwilling to do that?

Sincerely,  
Mike

Mike Matesky  
Matesky Law PLLC  
4500 9<sup>th</sup> Ave. NE, Suite 300  
Seattle, WA 98105  
**(Please Note New Street/Mailing Address Above)**  
Ph: 206.701.0331  
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[mike@mateskylaw.com](mailto:mike@mateskylaw.com)  
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**From:** Ben Hodges [<mailto:ben.hodges@foster.com>]

**Sent:** Wednesday, December 09, 2020 1:43 PM

**To:** Mike Matesky <[mike@mateskylaw.com](mailto:mike@mateskylaw.com)>; Nancy Stephens <[nancy.stephens@foster.com](mailto:nancy.stephens@foster.com)>; Kelly Mennemeier <[kelly.mennemeier@foster.com](mailto:kelly.mennemeier@foster.com)>

**Cc:** Michael Galletch <[mike@psbizlit.com](mailto:mike@psbizlit.com)>

**Subject:** RE: Reply in Support of Motion to Strike/Extend

Mike,

I don't think we can consent to the filing of the brief as we have other objections to the brief, so we don't think we can consent to the filing of it regardless of timing. We do not intend to object based on the one day though.

Thanks.

Ben

**Ben Hodges**

**Principal**

Foster Garvey PC

*Tel:* 206.447.6282

[ben.hodges@foster.com](mailto:ben.hodges@foster.com)

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**From:** Mike Matesky [<mailto:mike@mateskylaw.com>]

**Sent:** Wednesday, December 09, 2020 9:01 AM

**To:** Nancy Stephens; Ben Hodges; Kelly Mennemeier

**Cc:** Michael Galletch

**Subject:** RE: Reply in Support of Motion to Strike/Extend

Counsel,

I was able to file the brief this morning (unchanged from the version I served last night). Please let me know if I can file a consent motion for a 1-day extension.

Sincerely,  
Mike

Mike Matesky

Matesky Law PLLC

4500 9<sup>th</sup> Ave. NE, Suite 300

Seattle, WA 98105

**(Please Note New Street/Mailing Address Above)**

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**From:** Mike Matesky

**Sent:** Tuesday, December 08, 2020 8:29 PM

**To:** 'Nancy Stephens' <[nancy.stephens@foster.com](mailto:nancy.stephens@foster.com)>; 'Ben Hodges' <[ben.hodges@foster.com](mailto:ben.hodges@foster.com)>; 'Kelly Mennemeier' <[kelly.mennemeier@foster.com](mailto:kelly.mennemeier@foster.com)>

**Cc:** 'Michael Galletch' <[mike@psbizlit.com](mailto:mike@psbizlit.com)>

**Subject:** Reply in Support of Motion to Strike/Extend

Dear Counsel,

Attached please find Applicant's Reply in Support of Motion to Order Service of Testimony Depositions, Strike Opposer's Notice of Reliance, and Extend Applicant's Trial Period, as well as my reply declaration in support thereof.

I have been trying to file this through ESTTA this evening, but I am unable to do so. I am receiving an error message stating "Database used by ESTTA is not available at this time. Please try again later." (Interestingly, opposing counsel in another matter of mine had this same problem on Friday, but somehow was able to get a document filed yesterday).

I will continue to try to get this filed, but would appreciate your stipulation/consent to extend the filing deadline retroactively if I cannot get it filed in the next half hour or so.

Sincerely,  
Mike

Mike Matesky

Matesky Law PLLC

4500 9<sup>th</sup> Ave. NE, Suite 300

Seattle, WA 98105

**(Please Note New Street/Mailing Address Above)**

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